

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francine Kennedy Thomas	:	
	:	
v.	:	C-2016-2566493
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision dismisses a formal Complaint brought by Francine Kennedy Thomas (Complainant) against Philadelphia Gas Works (PGW). Complainant failed to appear for the hearing in this case, so her Complaint must be dismissed.

HISTORY

On September 9, 2016, Francine Kennedy-Thomas¹ filed a formal Complaint against PGW seeking reinstatement of service and a payment arrangement (PAR). The Complaint was an appeal from a determination by the Commission's Bureau of Consumer Services (BCS) at Case No. 3454049.

PGW filed an Answer on October 5, 2016, in which it denied any violation of the Public Utility Code (Code) or of the regulations of the Commission, and specifically denied that

¹ Although the case-caption includes no hyphenation of the Complainant's last name, she used a hyphen in her formal Complaint and correspondence. As this is clearly Complainant's preference, it will be used, here.

Complainant is entitled to reconnection absent payment of the outstanding balance on her account, and denied that Complainant is entitled to a new PAR.

On October 27, 2016, a hearing notice issued setting December 13, 2016, as the date for a telephonic hearing in this case. That hearing notice was sent to the parties at their addresses of record and was not returned by the United States Postal Service.

A standard form prehearing Order was issued on October 31, 2016. That Order clearly set forth the potential consequences of failure to appear at hearing.

On December 8, 2016, PGW filed a Certificate of Satisfaction stating that the Complaint had been resolved by the parties and asking that the docket be closed after expiration of the ten day objection period afforded the Complainant.

On December 19, 2016, the Secretary of the Commission received a letter from the Complainant dated December 13, 2016, in which she stated that she disagreed with the settlement and requested a re-listed hearing.

On January 24, 2017, a hearing notice issued setting March 3, 2017, as the date for a telephonic hearing in this case. That hearing notice was sent to the parties at their addresses of record and was not returned by the United States Postal Service.

The hearing convened as scheduled on Friday, March 3, 2017. Complainant answered my call, and I asked her to stay on the line while I conferenced in Laureto Farinas, Esquire, counsel for PGW. When I returned to Complainant with attorney Farinas on the line, the Complainant was not there. I subsequently tried to bring Complainant back into the call, but I reached several intercept messages and ultimately voicemail. I left a message for Complainant stating that if she did not rejoin the call and participate in the hearing she faced the possibility of a default judgment for non-prosecution as is set forth in the prehearing Order. I next tried the number that Complainant had listed as her cell phone, was once again routed to voicemail, and

again left the same message. Counsel for PGW then moved for dismissal on the basis of failure to prosecute the Complaint, which Motion I took under advisement.

On Monday, March 6, 2017, a gentleman identifying himself as Complainant's husband called and asked that the hearing be rescheduled as "the phone went out," on the day of the hearing. I told the individual that the hearing having adjourned with the Motion for Dismissal by PGW on March 3, 2017, his wife would have to send a letter/Petition for an additional hearing to the Secretary, copied to counsel for PGW and myself but cautioned that if that was not done by the date of the receipt of the transcript, the record would close.

On March 23, 2017, an eight page transcript was filed by the court reporter with the Secretary. The record closed on that date.

On April 4, 2017, I received an Answer from counsel for PGW dated March 28, 2017, to a Letter/Petition for a rescheduled hearing signed by Complainant dated March 23, 2017. I had not been served with or copied on the Letter/Petition. At my request, counsel for PGW sent me a copy of the Letter/Petition. Ultimately, the Letter/Petition was logged in by the Secretary with a date of March 27, 2016. The letter/Petition was not e-filed, therefore by any measure the Letter/Petition was filed after the close of the record.

On April 13, 2017, I issued an Order denying the request for a rescheduled hearing.

This matter is now ready for decision.

FINDINGS OF FACT

1. The Complainant in this case is Francine Kennedy-Thomas, 1130 South Cleveland Street, Philadelphia, Pennsylvania.

2. The Respondent in this case is Philadelphia Gas Works, a Commission jurisdictional natural gas distribution company.

3. On September 9, 2016, Complainant filed a formal Complaint.

4. On October 5, 2016, Penelec filed an Answer to the Complaint.

5. On October 31, 2016, a standard form Prehearing Order was issued.

6. The Prehearing Order was mailed to Complainant at the address that she provided on her Complaint.

7. The Prehearing Order was not returned by the United States Postal Service, and so is presumed to have been served on Complainant.

8. On March 3, 2017, a telephonic hearing convened as scheduled, originating from the Commission's office in Harrisburg, Pennsylvania.

9. Counsel for PGW appeared at the hearing, but Complainant did not.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, the Complainant is the proponent of a rule or order. Therefore, Ms. Kennedy-Thomas had the burden of proving that she is entitled to the relief requested in her Complaint.

The Commission satisfies the requirement of affording Complainant with administrative due process by providing timely notice of the hearing on the Complaint and the opportunity to be heard. *Schneider v. PA PUC*, 479 A.2d 10 (Pa. Cmwlth. Ct. 1984).

The hearing Notice, and the October 31, 2016 prehearing Order were mailed in the ordinary course of the Commission's business to Complainant at the address she provided on her Complaint and to counsel for Respondent at the address listed on its Answer. The hearing Notice and the prehearing Order were not returned by the post office as undeliverable. In addition, Complainant had the duty to keep her mailing address current with the Secretary, in accord with 52 Pa. Code § 1.24 of the Commission's regulations. Complainant has not provided notice of an address change.

The undersigned attempted to contact the Complainant by telephone at the time set for the hearing in this matter, at both telephone numbers provided by the Complainant on her Complaint. Complainant answered my call, and I asked her to stay on the line while I conferenced in Laureto Farinas, Esquire, counsel for PGW. When I returned to Complainant with attorney Farinas on the line, the Complainant was not there. I subsequently tried to bring Complainant back into the call, but I reached several intercept messages and ultimately voicemail. I left a message for Complainant stating that if she did not rejoin the call and participate in the hearing she faced the possibility of a default judgment for non-prosecution as is set forth in the prehearing Order. I next tried the number that Complainant had listed as her cell phone, was once again routed to voicemail, and again left the same message. Counsel then moved for dismissal of the Complaint with prejudice for failure to prosecute. I took the Motion under advisement and adjourned the hearing.

In this proceeding, Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. 66 Pa.C.S. § 332(a). By failing to appear and present any evidence in support of her Complaint, Complainant has failed to meet this burden. Thus, the motion of PGW to dismiss the Complaint for failure to prosecute will be granted, and the Complaint must be dismissed with prejudice. 52 Pa. Code § 5.245(a), *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed. *Jones v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. C-20054885 (Order entered February 14, 2006); and *Mya Lau v. PPL Electric Utilities Corp.*, Docket No. F-01816882 (Order entered October 19, 2005); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S. § 701.
2. The due process rights of the Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F 00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).
3. The Complainant, as the proponent of a rule or order, has the burden of proof. 66 Pa. C.S. § 332(a).
4. When a Complainant fails to appear for a scheduled conference or hearing, the Complaint is to be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works for dismissal, with prejudice, of the Complaint filed against it by Francine Kennedy-Thomas at Docket No. C-2016-2566493, for the failure of Ms. Kennedy-Thomas to appear and prosecute her Complaint at the March 3, 2017 hearing is granted.
2. That the Complaint of Francine Kennedy-Thomas against Philadelphia Gas Works at Docket No. C-2016-2566493 is dismissed, with prejudice, for the failure of Ms. Kennedy-Thomas to prosecute her Complaint.

